

Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure

DIRECTIVE 2007/58/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 23 October 2007

amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 31 July 2007⁽³⁾,

Whereas:

- (1) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽⁴⁾ was designed to facilitate the adaptation of the Community's railways to the requirements of the single market and to improve their efficiency.
- (2) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure⁽⁵⁾ concerns the principles and procedures to be applied with regard to the setting and charging of railway infrastructure charges and the allocation of railway infrastructure capacity.
- (3) In its White Paper European transport policy for 2010: time to decide, the Commission announced its intention to continue building the internal market in rail services by proposing to open up the market in international passenger services.
- (4) The aim of this Directive is to address the opening of the market for international rail passenger services within the Community, and it should therefore not concern services between a Member State and a third country. In addition, Member States should be able to exclude from the scope of this Directive services transiting the Community.
- (5) International rail services currently present a very contrasting picture. Long-distance services (for instance night trains) are in difficulty and several of them have recently

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been withdrawn by the railway undertakings operating them in order to limit losses. The market for international high-speed services, on the other hand, has seen a sharp increase in traffic and will continue its vigorous development with the doubling and interconnection of the trans-European high-speed network by 2010. Nevertheless, there is strong competitive pressure from low-cost airlines in both cases. It is therefore essential to stimulate new initiatives by promoting competition between railway undertakings.

- (6) It is not possible to open up the market in international passenger services without detailed provisions on infrastructure access, substantial progress on interoperability and a strict framework for rail safety at national and European level. All of these elements are now in place following the transposition of Directive 2001/12/EC⁽⁶⁾ of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC, Directive 2004/51/EC⁽⁷⁾ of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC, Directive 2001/13/EC⁽⁸⁾ of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC, Directive 2001/14/EC, and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways⁽⁹⁾. It is necessary for this new regulatory framework to be supported by established, consolidated practice by the proposed date for opening up the market for international passenger services. This will require a certain time. The target date for opening up the market should therefore be 1 January 2010.
- (7) The number of railway services without intermediate stops is very limited. In the case of journeys with intermediate stops, it is essential to authorise new market entrants to pick up and set down passengers along the route in order to ensure that such operations have a realistic chance of being economically viable and to avoid placing potential competitors at a disadvantage to existing operators, which have the right to pick up and set down passengers along the route. This right should be without prejudice to Community and national regulations concerning competition policy.
- (8) The introduction of new, open-access, international services with intermediate stops should not be used to bring about the opening of the market for domestic passenger services, but should merely be focused on stops that are ancillary to the international route. On that basis, their introduction should concern services whose principal purpose is to carry passengers travelling on an international journey. The determination of whether that is the service's principal purpose should take into account criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service. This determination should be made by the respective national regulatory body at the request of an interested party.
- (9) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road⁽¹⁰⁾ authorises Member States and local authorities to award public service contracts. These contracts may contain exclusive rights to operate certain services. It is therefore necessary to ensure that the provisions of that Regulation are consistent with the principle of opening up international passenger services to competition.

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- (10) Opening up international passenger services, which include the right to pick up passengers at any station located on the route of an international service and to set them down at another, including stations located in the same Member State, to competition may have implications for the organisation and financing of rail passenger services provided under a public service contract. Member States should have the possibility to limit the right of access to the market where this right would compromise the economic equilibrium of these public service contracts and where approval is given by the relevant regulatory body referred to in Article 30 of Directive 2001/14/EC on the basis of an objective economic analysis, following a request from the competent authorities that awarded the public service contract.
- (11) Some Member States have already moved towards opening up the market for rail passenger services by transparent, open competitive tendering for the provision of certain such services. They should not have to provide full open access to international passenger services, since this competition for the right to use certain rail routes has involved a sufficient test of the market value of running those services.
- (12) The assessment of whether the economic equilibrium of the public service contract could be compromised should take into account predetermined criteria such as the impact on the profitability of any services which are included in a public service contract, including consequential impacts on the net cost to the competent public authority that awarded the contract, passenger demand, ticket pricing, ticketing arrangements, location and number of stops on both sides of the border and timing and frequency of the proposed new service. Respecting such an assessment and the decision of the relevant regulatory body, Member States might authorise, modify or deny the right of access for the international passenger service sought, including the levying of a charge on the operator of a new international passenger service, in line with the economic analysis and in accordance with Community law and the principles of equality and non-discrimination.
- (13) In order to contribute to the operation of passenger services on lines fulfilling a public service obligation, Member States should be able to authorise the authorities responsible for those services to impose a levy on passenger services which fall within the jurisdiction of those authorities. That levy should contribute to the financing of public service obligations laid down in public service contracts awarded in conformity with Community law. It should be imposed in accordance with Community law, and in particular with the principles of fairness, transparency, non-discrimination and proportionality.
- (14) The regulatory body should function in a way which avoids any conflict of interests and any possible involvement in the award of the public service contract under consideration. In particular, if for organisational or legal purposes it is closely linked to the competent authority involved in the award of the public service contract under consideration, its functional independence should be ensured. The competence of the regulatory body should be extended to allow the assessment of the purpose of an international service and, where appropriate, the potential economic impact on existing public service contracts.

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- (15) This Directive constitutes a further phase of the opening of the rail market. Some Member States have already opened up the market for international passenger services on their territory. In this context, this Directive should not be understood as creating obligations for those Member States to grant, before 1 January 2010, access rights to railway undertakings licensed in a Member State where similar rights are not granted.
- (16) In order to encourage investment for services using specialised infrastructure, such as high-speed railway lines, applicants need to be able to plan and require legal certainty reflecting the substantial long-term investment involved. It should therefore be possible for those undertakings normally to conclude framework agreements with a term of up to 15 years.
- (17) The national regulatory bodies should, on the basis of Article 31 of Directive 2001/14/EC, exchange information and, where relevant in individual cases, coordinate the principles and practice of assessing whether the economic equilibrium of a public service contract is compromised. They should progressively develop guidelines based on their experience.
- (18) The application of this Directive should be evaluated on the basis of a report to be presented by the Commission two years after the date of opening up the market in international passenger services. This report should also assess the development of the market, including the state of the preparation of a further opening-up of the passenger rail market. In this report the Commission should also analyse the different models for organising this market and the impact of this Directive on public service contracts and their financing. In so doing, the Commission should take into account the implementation of Regulation (EC) No 1370/2007 and the intrinsic differences between Member States (density of networks, number of passengers, average travel distance). In its report the Commission should, if appropriate, propose complementary measures to facilitate any such opening, and should assess the impact of any such measures.
- (19) The measures necessary for the implementation of Directives 91/440/EEC and 2001/14/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹¹⁾.
- (20) In particular, the Commission should be empowered to adapt the Annexes to those Directives. Since those measures are of general scope and are designed to amend non-essential elements of those Directives, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (21) A Member State which has no railway system, and no immediate prospect of having one, would be under a disproportionate and pointless obligation if it had to transpose and implement Directives 91/440/EEC and 2001/14/EC. Therefore, such Member States should be exempted, for as long as they have no railway system, from the obligation to transpose and implement these Directives.
- (22) Since the objective of this Directive, namely the development of the Community's railways, cannot be sufficiently achieved by the Member States, given the need to ensure fair and non-discriminatory conditions of access to infrastructure and to take account

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of the obviously international dimension of the way in which important parts of the rail networks operate, as well as the need for coordinated transnational action, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(23) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽¹²⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(24) Directives 91/440/EEC and 2001/14/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 221, 8.9.2005, p. 56.](#)
- (2) [OJ C 71, 22.3.2005, p. 26.](#)
- (3) Opinion of the European Parliament of 28 September 2005 ([OJ C 227 E, 21.9.2006, p. 460](#)), Council Common Position of 24 July 2006 ([OJ C 289 E, 28.11.2006, p. 30](#)), Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), Legislative Resolution of the European Parliament of 25 September 2007 and Council Decision of 26 September 2007.
- (4) [OJ L 237, 24.8.1991, p. 25.](#) Directive as last amended by Directive 2006/103/EC ([OJ L 363, 20.12.2006, p. 344](#)).
- (5) [OJ L 75, 15.3.2001, p. 29.](#) Directive as last amended by Directive 2004/49/EC ([OJ L 164, 30.4.2004, p. 44](#)), corrected by [OJ L 220, 21.6.2004, p. 16](#).
- (6) [OJ L 75, 15.3.2001, p. 1.](#)
- (7) [OJ L 164, 30.4.2004, p. 164,](#) corrected by [OJ L 220, 21.6.2004, p. 58.](#)
- (8) [OJ L 75, 15.3.2001, p. 26.](#)
- (9) [OJ L 164, 30.4.2004, p. 44,](#) corrected by [OJ L 220, 21.6.2004, p. 16.](#)
- (10) See page 1 of this Official Journal.
- (11) [OJ L 184, 17.7.1999, p. 23.](#) Decision as amended by Decision 2006/512/EC ([OJ L 200, 22.7.2006, p. 11](#)).
- (12) [OJ C 321, 31.12.2003, p. 1.](#)